THE HONOURABLE SRI JUSTICE GODA RAGHURAM

Writ Petition No.10854 of 2006

Dated: 18th September, 2006

Between:

Balla Gandhi
S/o late Surya Rao,
Hindu, 38 years,
Occ: Cultivation,
R/o Peddapuram, E.G. District.

…..PETITIONER

AND

Revenue Divisional Officer,
Peddapuram, E.G. District and
2 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE
GODA RAGHURAM

W.P.No.10854 of 2006

ORAL ORDER:

No counter affidavit is filed to this writ petition. Writ petition is heard and disposed of after hearing the learned counsel for the petitioner Sri Challa Dhanamjaya and the learned Government Pleader for Endowments.

There is no representation on behalf of the 3rd respondent, despite the name of Smt. Indrani, Advocate appearing in the cause list. However, counter was filed on behalf of the 3rd respondent by Smt. Indrani.

The petitioner alleges that the respondents are trying to disturb his lawful possession of land in an extent of Ac.13.11 cents in R.S.No.384, 385, 390/1 and 391/1 situated at Peddapuram village and mandal, East Godavari district belonging to the 3rd respondent endowment institution, a choultry.

According to the petitioner he is the cultivating tenant along with his father and brother for an extent of Ac.13.11 cents in the aforesaid survey numbers. He pleads that his father was the original lessee about 40 years back. He was cultivating the land during his lifetime and died in 1999. During his life time also the petitioner was cultivating the land and after his father's death he continued to

cultivate the lands. According the petitioner when the Tenancy Tribunal ordered eviction in the year 1990, he filed a Writ Petition.9880 of 1992. This writ petition was allowed by this Court on 29-4-1999 directing the 3rd respondent institution to allow “them” to continue as tenants for a period of 6 years up to 2004 on payment of 20 bags makta an acre per year, irrespective of the crop raised. Petitioner also asserts that the

3rd respondent choultry recognized “their” tenancy and permitted them to cultivate the land without objection and was also accepting their rents.

According to the petitioner on 24-5-2006 the respondents came to the land and tried to dispossess him. He petitioned the respondents seeking continuance on the ground that he had raised the sugarcane crop and invested huge amounts. On these assertions the petitioner claims entitlement to a notice under Rule 5 of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003, and states that no such notice was issued. The petitioner also pleads that he is entitled to claim benefit as a land less poor person since the land in question is a dry land and is being cultivated by three of his family members as recognized by the 3rd respondent. Petitioner has not however made any application for being recognized as a land less poor person, to the competent authority.

On behalf of the 3rd respondent, counter affidavit has been filed by the Executive Officer of the institution. The counter states that the land in question was given on lease to one Sri. Balla Surya Rao, the father of the petitioner. As the tenant became a chronic defaulter, the 1st respondent tried to evict the tenant by way of filing A.T.C and a tenancy appeal. Against proceedings of Tenancy Tribunal and

Appellate Tribunal, the original tenant

Sri Balla Surya Rao filed W.P.No.9380 of 1992. The writ petition was disposed of recording that the lease shall continue for 5 years i.e., for the Kharif Season 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004 and that further renewal of lease would be in terms of the lease agreement that may be entered into between the parties. Other conditions were also incorporated in the Judgment of this Court in W.P.No.9380 of 1992. This Court had also directed that if the lessee violates any of the directions in the Judgment, the lease in his or her favour will stand automatically terminated and the lessees would be liable for eviction. The answering respondent further states that after disposal of the writ petition, the original tenant expired and the legal heirs filed

an L.R. Petition. The 3rd respondent also states that the petitioner is in arrears of 940 bags of paddy and for recovery of the same O.S.No.9 of 2003 and O.S.No.15 of 2006 were filed and are pending. It is further stated that as the lease period was over the institution had conducted public auction on 15-5-2006 by dividing the land into 3 plots, and for one of them one Sri B.Rama Krishna was declared the highest bidder, for the 2nd one

Sri. G.Venkata Swamy and for the 3rd one Sri V.Raj Kumar, were the highest bidders. It is also asserted that at the time of conducting public auction on 15-5-2006 the petitioner did not raise any objection, but later has field the present writ petition and obtained interim directions concealing the fact of his default in the payment of rents. Responding to the petitioner's claim to being a landless poor person, the counter affidavit of the 3rd respondent states that as petitioner entered upon the land in the year 1999, after the commencement of Act 30 of 1987, he is not entitled to the benefits under Section 82 as he is not the original tenant, and also for the reason that there is no valid lease in his

favour.

The assertion of the 3rd respondent that the petitioner is a chronic defaulter and is in arrears of 940 bags of paddy by the year 2005, has not been denied. The petitioner does not also plead, assert or establish that there is a valid lease in his favour or state when such lease was entered into, whether such lease was granted after a process of public auction or under any written order of the competent authority, declaring that the process other than public auction was necessary in the interests of the institution or even as to whether a lease deed was at all executed.

Mere occupiers of endowment properties from whom the endowment officers or managers of endowment institutions accept monies purported to be lease amounts, cannot be considered cultivating tenants within the meaning of Section 82 of the Act. The provisions of the Andhra Pradesh Charitable And Hindu Religious Institutions & Endowments Act, 1987 and the statutory rules the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (issued in G.O.Ms.No.379, Revenue Department, dated 11-3-2003) set out the mandatory provisions that govern the substance and procedure to be followed for grant of leases. No discretion except what has been spelt out in the statutory environment is consecrated on any endowment officer, whether the Commissioner of Endowments or the Manager of an endowment institution, which enables them to grant oral leases. Clandestine or Sub-rosa understanding between a private citizen and an endowment official to permit a person to occupy endowment lands does not constitute a lease within the meaning of the Act and the Rules. Such occupier enjoys no highest status than of an encroacher. He is not entitled to any benefits under Section 82 of the Act. A cultivating tenant under Section 82 of the Act should mean a lawful

cultivating tenant vide decision of the Supreme Court in ***Budhan Singh Vs. Babi Bux***[1]***.***

In the absence of any lawfully executed lease in his favour in accordance with the substantive and procedural discipline mandated by the provisions of the Act and the Statutory Rules, the petitioner cannot be considered a cultivating tenant. If he is not a cultivating tenant he cannot be a landless poor person either. As the petitioner has not denied the assertion in the counter affidavit that he is in arrears of 940 bags of paddy by 2005, the petitioner is not entitled to any equitable treatment either.

For the aforementioned reasons there are no merits in the writ petition. The writ petition is dismissed at the stage of admission. No costs.

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(GODA RAGHURAM,J)

Date:18the September, 2006.
GRK

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[1] AIR 1970 S C 1880